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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,903	03/31/2004	Darin Schaeffer	8627/306	5033
757 7590 10/17/2008 BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610				
EXAMINER				
TRUONG, KEVIN THAO				
ART UNIT		PAPER NUMBER		
3734				
MAIL DATE		DELIVERY MODE		
10/17/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/813,903

Applicant(s)

SCHAEFFER, DARIN

Examiner

Kevin T. Truong

Art Unit

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on RCE and Amendt. 07/08/2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 and 37-50 is/are pending in the application.
- 4a) Of the above claim(s) 43-50 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 and 37-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/888)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 07/08/2008 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-27 and 37-42 are rejected under 35 U.S.C. 102(b) as being anticipated by Harrison (US 2002/0123791).

Harrison discloses in figures 6-9, An expandable stent (12) comprises a plurality of serpentine ring structures, wherein at least one of said ring structures comprises a first key-hole shaped bend (22) and a second key-hole shaped bend (23), wherein the first and second key-hole shaped bends (22,23) being disposed circumferentially adjacent to one another on the same ring structure and being longitudinally staggered with respect to one another, said first and second key-hole shaped bends (22,23) thereby avoiding abutment of the key-hole shaped bends against one another when the

stent is in an unexpanded state, and a plurality of strut members (13), wherein each of said key-hole shaped bends (22,23) has a first end connected to one of said strut members (13) and a second end connected to another of said strut members (13); and at least one connector member joining two of said ring structures, said at least one connector member having a first end joined to a peak of one of said bends of one of said two ring structures and a second end joined to a peak of one of said bends of the other of said two ring structures; wherein said bends which said connector member is joined to are key-hole shaped; wherein each unit structure of each of said plurality of ring structures is in communication with at least one connector member, wherein there are two or more connector members joining said two ring structures and said connector members are circumferentially aligned, wherein adjacent ring structures are axially aligned, wherein some adjacent unit structures are joined together by first and second substantially straight tie-bars, wherein said plurality of bends are positioned substantially between said first and second substantially straight tie-bars.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-27 and 37-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frantzen (U.S. 6,042,606) in view of Boatman et al. (U.S. 6,464,720).

Frantzen discloses the claimed invention as described in figures 3 and 6 which also, includes a plurality of bends (at 40,46) connected between first and second struts (36) and positioned in a staggered arrangement to avoid abutment of the plurality of bends (at 40,46). Frantzen does not disclose first and second key-hole shaped bends being disposed circumferentially adjacent to one another on the same ring structure and being longitudinally staggered with respect to one another, said first and second key-hole shaped bends thereby avoiding abutment of the key-hole shaped bends against one another when the stent is in an unexpanded state. However, Boatman et al teaches in figure 7, that it is known in the surgical art to have first and second key-hole shaped bends being disposed circumferentially adjacent to one another on the same ring structure and being longitudinally staggered with respect to one another, said first and second key-hole shaped bends thereby avoiding abutment of the key-hole shaped bends against one another when the stent is in an unexpanded state. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Frantzen's bends (at 40,42,50,52) which connected to first and second struts by substituting for the key-hole shaped bends as taught by Boatman et al in order to reduces bending stresses and allows for a slightly greater expanded diameter than in a simple "U"- or "V"- shaped bend.

Response to Arguments

3. Applicant's arguments with respect to claims 1 and 16 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin T. Truong whose telephone number is 571-272-4705. The examiner can normally be reached on Monday-Friday from 8:00 AM to 4:30 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kevin T. Truong/
Primary Examiner, Art Unit 3734

Kevin T. Truong
Primary Examiner
Art Unit 3734